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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-fifth session

SUMMARY RECORD OF THE 1054th MEETING

PRI

Held at the Palais des Nations, Geneva
on Tuesday, 9 August 1994, at 3 p.m.

Chairman: Mr. GARVALOV

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The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Tenth, eleventh and twelfth periodic reports of Spain (HRI/CORE/1/Add.2/Rev.1 and CERD/C/226/Add.11)

1. At the invitation of the Chairman, Mr. Gonzalez de Linares (Counsellor to the Permanent Mission of Spain) and Mrs. Vevia Romero (Technical adviser to the Under-Directorate-General for International Juridical Cooperation at the Ministry of Justice and the Interior) took places at the Committee table.

2. Mrs. VEVIA ROMERO (Spain) said that she would supplement Spain's very succinct report by her oral presentation, in particular regarding the situation since 1991. Spain was especially concerned to combat racism and xenophobia, as it considered such attitudes to be incompatible with the ideals of any human society as well as being morally reprehensible, socially unjust and pernicious. The principle of equality was perhaps the one most widely recognized and applied by the international community; it was to defend that principle that the international community had embarked on the Third Decade to Combat Racism and Racial Discrimination.

3. It was all the more important to foster equality because of the alarming resurgence, even in some of Europe's oldest democracies, of racism, xenophobia and certain ideologies of sinister repute whose encouragement of violence against the most underprivileged groups, and primarily foreigners, had had so destructive an impact on world peace and security. There was no systematic racism in Spain, although isolated outbreaks of racism had been noted and contemporary Spain, with over 3 million unemployed, i.e. almost one quarter of the active population, and with its growing flow of immigrants, met all the economic requirements for the revival of xenophobia and associated violence. The Gypsy minority had already suffered racist acts. On every occasion, the governmental and judicial authorities had responded severely and the perpetrators of the acts, whether small groups or individuals, had been duly tried and convicted. Public opinion had reacted vigorously, either through campaigns organized and subsidized by both the authorities and Spanish non-governmental organizations (NGOs) through spontaneous popular demonstrations or demonstrations organized by local associations. The Ministry of Social Affairs had just launched an awareness campaign for public officials to encourage openness among them and thereby facilitate administrative formalities. The media played a growing role in those efforts and reported any new trace of discrimination. Because they were citizens of a democratic State ruled by law, but also because they were Spaniards, the citizens of Spain were deeply convinced that plurality, which was an essential element of the European identity, was a source of enrichment for the political and social life of peoples, and that assertion of their identity by some people should not be to the detriment of others.

4. The aim of the education given to Spain's younger generations by their elders, the vast majority of whom supported democracy and a united Europe, was to instil in them the principles of tolerance and equality so as to prevent them from being drawn into the spiral of racist violence, either by conviction

or out of a desire to mimic events in other countries. As part of the European campaign for youth against racism, xenophobia, anti-Semitism and intolerance organized by the Council of Europe, and due to take place in 1995, a Spanish committee had been set up comprising representatives of State bodies and of the Autonomous Communities, together with representatives of NGOs. Even before the Vienna Conference, Spain had adopted specific and effective measures in the social, economic, cultural and educational spheres to combat and forestall all manifestations of racism, xenophobia and intolerance. In addition, the new Criminal Code classified racist or xenophobic motives as aggravating circumstances to an offence and penalized the dissemination of any ideology that encouraged racial discrimination or hatred.

5. Since 1991 the Government of Spain had taken a number of measures to protect foreign workers, in particular clandestine workers. It had established an interministerial commission for foreign nationals and an aliens bureau, placed the Directorate-General for Migration under the responsibility of the Ministry of Social Affairs and approved a new procedure for family reunion of aliens resident in Spain but who were not citizens of the European Union. Regarding the Gypsy community, since 1988 the Ministry of Social Affairs had been implementing the Gypsy Development Plan which was designed to enable Gypsies to achieve genuine equality with the rest of the population. In addition, the Ministry was in the process of concluding with the media and the various Autonomous Communities an agreement on self-regulation of the media in respect of certain issues concerning protection of the ethnic minorities residing in Spain.

6. Mr. FERRERO COSTA (Country Rapporteur) said he was pleased that the dialogue with Spain, which had been interrupted since 1988, had resumed. Spain was a country whose role in furthering human rights had been recognized; for example, several countries had followed Spain's example by establishing the office of People's Advocate. However, in view of the period it was intended to cover, i.e. approximately eight years, the report submitted by Spain, which was its twelfth, was insufficient in every respect. It was in no way in conformity with article 9, paragraph 1, or with the Committee's guidelines regarding the form and contents of reports (CERD/C/70/Rev.3). It was only four pages long, and only a few paragraphs satisfied the Committee's expectations: paragraph 6, which described the new Bases of the Juridical Regime (Public Authorities and Common Administrative Procedure) Act, stipulating the language to be used in administrative proceedings; paragraph 8, which drew attention to article 3 of the General Prisons Organization Act (No. 1/1979) and paragraph 9, which referred, albeit too briefly, to the important decision taken in 1991 by the Constitutional Court to grant amparo to a Jewish citizen. Otherwise, the members of the Committee were referred to documents held by the secretariat or by the Ministry of Social Affairs and the Ministry of Education and Science.

7. The core document (HRI/CORE/1/Add.2/Rev.1) provided information that was undoubtedly useful, but it by no means filled the gaps in the report and failed to answer the questions the Committee had put in 1988, including those concerning the previous reports. The oral presentation which the Committee had just heard was very dense, but it was not a satisfactory supplement to the report. However, the main shortcoming of Spain's report was its failure to mention the problems of racial discrimination which, according to various

sources, currently existed in Spain and which would probably worsen, as in other European countries, especially with regard to foreigners and immigrants. The situation in Spain was clearly more diverse and complex than described in the report. It was sufficient to read the 4 August 1994 issue of the newspaper El País to realize that racist or xenophobic incidents occurred and that the Government was responding to them. Four reports from that issue were of direct interest to the Committee. The first concerned the remedy filed by two human rights organizations for the Act on Asylum to be declared unconstitutional on the grounds that it failed to guarantee freedom for asylum-seekers at the border; the latter were held for up to a week without the assistance of a lawyer or an interpreter. The organizations concerned had also requested the establishment of a judicial mechanism effectively to suspend administrative decisions to expel asylum-seekers. The second report concerned the numerous unresolved conflicts between the Autonomous Communities of Catalonia and the Basque Country and the central Government. The third related to an incident at Formentera involving the arrest of an Italian tourist, after which the municipal group of the Partido Popular had demanded the mayor's resignation on the grounds that the local police had gone too far. The fourth and last report concerned the awareness campaign for public officials mentioned by the representative of Spain, in the course of which officials, including the Mayor of Madrid, no doubt betrayed by their subconscious, had reportedly said that immigrants should go home.

8. He wished to ask some questions that did not solely concern the information provided in the two reports under consideration, and if necessary could be answered in writing in the next periodic report. They concerned four areas, the first of which was demography. The Committee would appreciate information on Spain's demographic composition, which was not mentioned in either of the two reports under consideration. According to paragraph 8 of the guidelines concerning reports, the Committee should be informed of the country's demographic composition, even if only in general terms. Regarding, for example, the Gypsy population, the figures from different sources varied considerably, and it was hard to know which were accurate. The Committee would also appreciate information on the population of Jewish, North African and Sub-Saharan origin, as well as an estimate of the number of foreigners residing in Spain. The figures and data contained in the annex to the report submitted in 1985, on the number of foreigners who had been granted asylum in Spain, the percentage of aliens who were refugees in Spain the approximate number of applications from refugees and of applications for asylum and refugee status submitted to the Interministerial Commission should also be updated.

9. The ethnic or social origin of the illiterate and unemployed persons referred to in the core document should also be specified. He would also like to know if the unemployed had made up 16.3 per cent of the active population in 1991 or, as indicated by other sources, 22 per cent. More generally, the Committee would appreciate additional information on the main responsibilities and powers of the 17 Autonomous Communities in relation to the central Government, for example their degree of autonomy in the sphere of education, and on the disputes between those Communities and the central Government which were still pending before the Constitutional Court; in other words,

information on the juridical structure which enabled the Autonomous Communities, in particular Catalonia and the Basque Country, freely to give political expression to their linguistic and cultural identity.

10. Regarding the application of article 2 of the Convention, he requested information on the situation of the Gypsies. In the 1994 report on human rights by the United States State Department, it was indicated that Gypsies continued to suffer from de facto discrimination, especially in the areas of housing, education and employment. He asked whether the Spanish delegation could confirm or refute that statement. He also asked what specific and tangible measures the Government of Spain had taken duly to ensure the development of Gypsies, as it was required to do by article 2, paragraph 2, of the Convention. Spain's ninth periodic report (CERD/C/149/Add.14) described various projects by the Government of Spain on behalf of the Gypsy population, and in particular the national Gypsy Development Plan. He asked whether that plan had been successfully completed and what results had been achieved. He also requested details of the respective roles of the central Government and of the Autonomous Communities in executing the plan. The ninth periodic report also referred to the establishment of an administrative agency to deal with the Gypsy community. He asked whether the agency had been set up, how it operated and what results had been achieved to date. Reference had also been made, first of all when the eighth periodic report had been presented, and then in the ninth report, to a plan to enable children to catch up at school. He asked what the plan had achieved for the Gypsy population. According to information he had received, in 1991 the Madrid city council had implemented a programme for the family reunion of Gypsies, which had been halted in 1993. He asked how the programme had operated and why it had been stopped. Finally, regarding the situation of the Gypsy population, he asked what other overall measures the Government of Spain had taken since 1987 properly to ensure their development in the social, economic and cultural spheres.

11. Again in connection with the application of article 2 of the Convention, questions had been put, following the consideration of Spain's ninth periodic report, about the situation of the inhabitants of the towns Ceuta and Melilla, and in particular that of their Muslim inhabitants. He asked whether the Government of Spain was planning any measures to ensure equal rights and obligations for Spaniards and Muslims. As the written reply which should have appeared in the most recent report - i.e. the twelfth - had not been included, he repeated the question.

12. The Committee was currently particularly concerned about the disturbing situation of aliens and immigrants: throughout Europe, they were becoming increasingly marginalized and suffered from racial discrimination, while xenophobic acts against them were multiplying. Paragraph 3 of the twelfth periodic report made reference to the Rights and Freedoms of Aliens in Spain (Organization) Act (No. 7/1985) of 1 July 1985. He had consulted the full text of the Act, which raised five questions which the representative of Spain had not answered in her presentation. First of all, article 6 of the Act made it possible to compel aliens to reside in specific places. He suggested that the provision might be incompatible with article 3 of the Convention, which prohibited all forms of segregation. Secondly, article 8 of the Act made it possible to suspend the activities of an association of aliens lawfully resident in Spain in certain specified circumstances. He asked why those

restrictions existed. Thirdly, in its article 9 the Act extended to aliens the right to education, subject to reciprocity. He asked why that requirement was made. Fourthly, article 11 of the Act authorized foreign nationals to enter Spanish territory provided that they had the necessary identity documents and were not subject to a specific prohibition. He asked what the scope of that legal norm was. Finally, article 34 of the Act stipulated that appeals could be made against administrative measures taken under the Act in respect of aliens, although the appeal did not have a suspensive effect. According to his information, that paragraph had been declared void by a decision of 7 July 1987 on grounds of unconstitutionality. He requested further information about the decision and its consequences.

13. More generally, he inquired about current Government policy on foreign immigration: were all foreign immigrants treated the same, whether they came from Africa, Latin America, Asia or Europe? What legal norms had been adopted since 1986, particularly in respect of requirements for entry to Spain and working conditions? What was the content of the awareness campaign for public officials dealing with immigration questions, to which the representative of Spain had referred? Finally, he asked whether legislation on and Government policy towards the right of asylum and legislation applicable to refugees had been modified since 1987.

14. The report on human rights by the United States State Department described racist behaviour in Spain towards immigrants from Africa and South America. In particular, it criticized the refusal of the police to take action in response to manifestly racist attacks or to help punish the acts. He wished to ask the representative of Spain a number of questions in that connection. Had racism and xenophobia increased or diminished in Spain in recent years? Apparently they were on the increase, as in other European countries. What laws and administrative measures had been adopted to prevent manifestations of racism and xenophobia, to ensure that the Spanish police protected aliens and did not practise racial discrimination against them and to put an end to certain types of behaviour towards some foreigners by Spanish officials and policemen at airports?

15. He then turned to Spain's performance of its obligations under article 4 of the Convention. The twelfth report failed to address the issue, although the representative of Spain had said in her oral presentation that under the new Spanish Criminal Code, racist or xenophobic motivations would constitute aggravating circumstances in all offences and that the dissemination of any ideology which encouraged discrimination or racial hatred would be penalized. He asked what the exact scope of the reform of the Criminal Code would be and what penalties were laid down for incitement to racial hatred. According to the 1993 World Report on Anti-Semitism, there were a number of organizations in Spain which advocated racism, in particular the "Círculo Español de Amigos de Europa" (CEDADE), a neo-Nazi organization established in 1965, which had approximately 1,500 members and published anti-Semitic publications. Other fascist and racist organizations mentioned in the report included two extreme right-wing parties, the "Frente Nacional" and the "Juntas Españolas", as well as "Nación Joven", "Las Bases Autónomas", "Coordinadora Estudiantil Nacional Revolucionaria" and "Fuerza Nacional de Trabajo". He asked for information on those organizations and their objectives, and whether, if they were such as

they were described, the new provisions of the Criminal Code would make it possible to disband them and to penalize their leaders, as required of Spain, as a State party, by article 4, paragraph (b).

16. The twelfth periodic report provided no precise information on the application of article 5 of the Convention. He drew attention to the Committee's general guidelines regarding the form and contents of reports to be submitted by States parties (CERD/C/70/Rev.3), in relation to article 5. It was not sufficient to describe the relevant constitutional and legislative provisions, as did Spain's eighth and ninth periodic reports, to conclude that Spain implemented article 5 of the Convention. In Spain as elsewhere, cases of racial discrimination violating the provisions of article 5 occurred in daily life. To illustrate his point, he referred to an article published by El País on 28 September 1992 (p. 18), entitled "Racismo en el Hypermercado", ("Racism at the hypermarket"), which reported that the director of the hypermarket referred to in the article refused to admit Gypsies. The incident had been widely reported by the press.

17. Another example concerned a right set out in article 5, paragraph (e) (i) of the Convention, the right to work. In the concluding observations made in 1993 in respect of the ILO Discrimination (Employment and Occupation) Convention, No. 111, reference had been made, in respect of Spain, to the claim by a trade union, the Confederación de Trabajadores, that the working conditions of coloured or Muslim workers in the region of Catalonia and Maresme and in Ceuta and Melilla were worse than those of Spaniards. He asked whether the representative of Spain could provide the Committee with information on any measures the Government intended to adopt to ensure that in practice coloured or Muslim workers who were Spanish nationals did not suffer from racial discrimination in employment.

18. Regarding the application of article 6 of the Convention, he had a number of questions about the People's Advocate, whose functions were described in paragraph 29 of the core document submitted by Spain (HRI/CORE/1/Add.2/Rev.1). The document stated that "he coordinates with the parallel institutions in the Autonomous Communities ...". He asked how coordination was effected and to which authorities the People's Advocate on the one hand and the people's advocates in the Autonomous Communities on the other, were responsible. Was there a People's Advocate in each of the 17 Autonomous Communities? Secondly, it was also stated in paragraph 29 of the core document that the institution of People's Advocate "is highly effective in protecting human rights, as illustrated by the number of complaints with which it has dealt". He asked how many, and what kind of complaints it had dealt with: were questions of racial discrimination important among them or did they concern other human rights? What had been their outcome and what had been the upshot of the recommendations made by the People's Advocate?

19. He also inquired what the content of the annual report prepared by the People's Advocate was, and whether it contained a chapter dealing specifically with the emerging problems of racial discrimination and xenophobia. Was the report public and what was the follow-up to it? He recalled that in its ninth periodic report (CERD/C/149/Add.14), Spain had examined at length the meaning of the Spanish word "gitanada" (paras. 64-77) which had been the subject of a complaint to the People's Advocate on account of its pejorative

nature. He asked what action had been taken on the suggestion by the People's Advocate (para. 76 of the same report). Had the term been deleted from the dictionary? He also asked how the members of the Office of the Public Prosecutor (core document, para. 30) were appointed.

20. He had been extremely interested to learn of the new norms governing the use of the languages of the Autonomous Communities in administrative proceedings (twelfth report, paras. 6 and 7). He commended those extremely valuable, positive measures. Regarding the implementation of article 6 of the Convention, the Committee attached great importance to judicial decisions relating to questions of racial discrimination. In particular, it attached the greatest importance to the decision taken by the Constitutional Court on 11 November 1991 (report, para. 9) which, in its view, should have been given more attention in the report. The decision was a noteworthy step forward in Spanish case-law. He asked whether it was exceptional or whether the Constitutional Court or the ordinary courts had handed down other, similar decisions in cases involving complaints of racial discrimination.

21. Regarding article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination, he requested clarification of paragraphs 38-40 of the core document, which was an integral part of the report submitted by Spain (HRI/CORE/1/Add.2/Rev.1). First of all, he asked into which languages the human rights instruments had been translated and whether the Convention had already been translated into some of them. Paragraph 39 of the core document stated that there were numerous institutions, both public and private, whose task was to study and publicize human rights. He asked what they were and whether there was any institution specifically responsible for the problem of racial discrimination. According to paragraph 40, each year the People's Advocate prepared a report which was submitted to the Cortes Generales. He asked whether the report was widely disseminated in Spain. Regarding education and information on human rights, it was interesting to learn of the measures taken by the Government of Spain to combat acts of racial discrimination within the police forces themselves and to foster understanding and tolerance towards foreigners. Finally, he recalled that when Spain had acceded to the Convention it had made a reservation in respect of article 22, concerning the mandatory jurisdiction of the International Court of Justice, and asked whether the Spanish authorities had considered the possibility of withdrawing that reservation, and also of recognizing the competence of the Committee to consider individual communications from victims of racial discrimination. He pointed out that 20 States parties had made the declaration provided for in article 14. He noted that Spain had acceded to the Optional Protocol to the International Covenant on Civil and Political Rights and had accepted the jurisdiction of the European Commission of Human Rights. He thanked the delegation of Spain for its attention.

22. Mr. BANTON first of all thanked Mr. Ferrero Costa for his scrupulous and comprehensive review of racial discrimination in Spain and said that he endorsed his remarks. He wished to draw the attention of the delegation of Spain to the Committee's financial difficulties. He recalled that a number of amendments were planned to the Convention and noted that only 13 States parties had deposited the necessary instruments of acceptance for those

amendments, whereas they had to be accepted by 90 States parties in order to enter into force. He would like to know whether Spain had taken the necessary steps in that respect.

23. He understood that racism was on the rise in Spain and found it regrettable that Spain's report failed to provide replies to the questions asked during the consideration of the seventh, eighth and ninth periodic reports. He referred to a number of articles published by several law professors emphasizing the lamentable lacunae of current Spanish legislation on racial discrimination, and asked the Spanish delegation for its views of the criticisms made. In connection with the application of article 5 (b) of the Convention (the right to security of person without discrimination), he asked for details of the events in the town of Fraga, whose mayor had reportedly resigned from office in protest against the climate of violence sustained there by right-wing extremists, some 30 of whom had allegedly attacked a group of North Africans in June 1992. He asked whether any measures had been taken in the town and what lessons could be drawn from that sorry experience. On 22 February 1994 El País had reported that six soldiers had been arrested for attacking two Somalis in a discothèque. He asked whether any other information was available on that incident. He also asked for details of the case involving the policeman Luis Merino and three other persons who had reportedly received prison sentences for the murder of a South American immigrant. He understood that their trial had sparked off a nationwide debate on racism whose conclusions he would like to know. Twelve youths had also allegedly been arrested and sentenced to prison for attacking six Algerians in a park in Huesca (El País, 3 March 1994). He asked whether the Public Prosecutor was entitled to appeal against the decision and, if so, whether he would exercise that right in the instant case.

24. He deplored the lack of information on the protection of the rights set out in article 5, paragraphs (d) and (e) (vi) of the Convention. Regarding article 5, paragraph (e) (vi) (right to equal participation in cultural activities), he noted that the Spanish delegation had mentioned that the media played a role in ensuring satisfactory communication with officials regarding the treatment of immigrants. He pointed out that there was no mention of immigrants in the Convention, which concerned only situations in which persons were the victims of racially motivated acts. In his view the question of the media - which was connected with cultural activities - was of paramount importance. He was deeply concerned about the daily television reports concerning ethnic conflicts in Ethiopia, Rwanda, etc., which gave impressions that were likely to influence the behaviour of viewers. Although he had no wish to advocate censorship, which would merely aggravate the problem, he urged Governments to broadcast certain images only with the greatest circumspection and not to foment racial discrimination. Regarding article 5, paragraph (f), of the Convention, he noted that an investigation had begun into cases of discrimination against Africans who had allegedly been refused entry to a discothèque. He asked whether suitable remedies were available to them. He concluded by expressing the hope that Spain's next report would be considerably more substantial than the twelfth report before the Committee.

25. Mr. de GOUTTES said that Spain's periodic reports were of obvious importance on account of Spain's place in the world and its role in the international community. The twelfth periodic report submitted to the

Committee fell short of its expectations, as the Committee was not accustomed to receiving such brief reports. It was true that the report was presented as a mere update of the eighth and ninth periodic reports, but as they dated from 1986, a new and full report should have been submitted in 1994. The report left an unsatisfactory impression, which had fortunately been offset by the oral presentation made by Mrs. Vevia Romero, who had provided the Committee with up-to-date information. Nevertheless, he hoped that the next report would be in conformity with the Committee's guidelines regarding the form and contents of reports, i.e. that it would contain two parts (a general part on the economic, political and social context of the country and a part specifically concerning the application of each of the provisions of the Convention).

26. He had been deeply impressed by the extensive and comprehensive observations made by the Country Rapporteur, which testified to the importance that Mr. Ferrero Costa rightly attached to consideration of the situation in Spain. He would simply ask some supplementary questions which would be as brief as possible. First of all, he said that in his view the Committee lacked information on Spanish legislation against racism. He asked the Spanish delegation to give details of the current state of such legislation, and in particular to clarify whether article 4 of the Convention was fully implemented in Spain. Although, in paragraph 5 of the twelfth periodic report, valuable information had been provided about a provision of the draft Criminal Code currently being considered by Parliament which made racial discrimination an aggravating circumstance in offences against persons, the Committee should be given more particulars on the contents of the reforms currently under preparation, to the Criminal Code as a whole.
Mrs. Vevia Romero had also mentioned the plan to penalize attempts to justify racism and racist propaganda. Although those provisions were important, they alone were insufficient to ensure that legislation was in conformity with article 4 of the Convention. He would also like to know when the new Spanish Criminal Code would come into force.

27. His second question concerned the resurgence of manifestations of racism already referred to by Mr. Ferrero Costa and Mr. Banton, which unfortunately was occurring almost everywhere in the European countries and elsewhere (numerous recent reports described the revival of the phenomenon in Germany, the United Kingdom, etc.). There was nothing in the twelfth periodic report to suggest that Spain was affected by the phenomenon. However, according to various sources referred to by Mr. Ferrero Costa, and in particular the report by the People's Advocate, cases of aggression or racial discrimination for which the police were often responsible, allegedly took place in Spain, particularly affecting immigrant workers and people from North Africa and other African or South American countries. In her opening statement, Mrs. Vevia Romero had frankly admitted that such incidents occurred (the case of Lucrecia Perez and of the village of Mancha Real). He asked the Spanish delegation for further details of those incidents, of the numerous racist acts recently reported and of the prosecutions and convictions to which they had given rise, together with information on the existence of racist, xenophobic, anti-Semitic and other groups (skinheads, neo-Nazis, extreme-right-wing groups). He also asked to what extent such groups attracted young people.

28. Thirdly, he took up an issue already raised in 1986 when Spain's ninth periodic report had been considered, and which had remained unanswered: the size of the Gypsy population in Spain, its distribution between the provinces, the percentage of its members in the public administration and in the various professions, etc. It would be interesting to know whether any measures had been adopted to offset the discrimination from which the Gypsies had suffered in the past. The report submitted in 1986 described a comprehensive Gypsy development plan and measures on behalf of the Gypsies. He asked what the outcome of the plan had been. As Mrs. Vevia Romero had referred to a number of measures on behalf of the Gypsies and other minorities, details of the measures adopted and the minorities concerned would be useful.

29. Fourthly, he said that the People's Advocate was a novel and interesting institution which had been copied in many Latin American countries. He would like to know the role and competence of the institution in relation to the administrative and judicial authorities. He asked whether the People's Advocate himself investigated complaints concerning human rights which he was authorized to receive and whether he could transmit them to the administration, to the judicial authorities or to the Constitutional Court. It would also be useful to know whether cases of racial discrimination had been laid before the People's Advocate. When the previous reports had been considered the Committee had been informed that that had not been done. Accordingly, he requested clarification of the current situation in that regard.

30. His fifth question was why was Spain not planning to make the declaration provided for by article 14 of the Convention, concerning individual communications. Spain had already accepted individual applications under the European Convention on Human Rights (art. 25). Willingness to accept individual communications within the framework of the International Convention on the Elimination of All Forms of Racial Discrimination would be a very valuable complement to the individual applications mechanism instituted by the European Convention, as the latter was limited to the protection of the rights set out in the European Convention but did not concern, for instance, the economic, social and cultural rights covered by article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination. He pointed out that 10 countries (Denmark, France, Italy, Sweden, Norway, Netherlands, Cyprus, Iceland, Hungary and Bulgaria) which had already accepted individual applications under the European Convention on Human Rights had accepted individual communications within the framework of the Convention on the Elimination of Racial Discrimination. He therefore hoped that at a time when racism was raising its head in Europe and in many other countries, Spain would join those States and thereby express its concern, as a great country, for the Convention and for the efforts of the international community to combat racial discrimination.

31. Mr. VALENCIA RODRIGUEZ thanked the delegation of Spain for the information it had provided and Mr. Ferrero Costa for his detailed report. In Spain, there had been isolated cases of racial discrimination, the existence of which had been recognized orally by the Spanish delegation. He endorsed the remarks made by Mr. Ferrero Costa, who had almost exhausted the issue of racial discrimination in Spain. For his part, he expressed regret that the

brief document submitted by way of a report contained only general information. Even if there was nothing new for Spain to report regarding the application of articles 2-7 of the Convention, the report could have made a useful digest of earlier information in order to make it possible better to assess the current situation. Paragraphs 1 and 2 of the report stated that "Spaniards are equal before the law" and that "aliens in Spain shall enjoy the public freedoms guaranteed by the present title, under the terms to be laid down by treaties and the law". He would appreciate details of the restrictions applicable to foreigners that affected the enjoyment of their rights, and of the commitments assumed by Spain within the framework of the European Union. He asked what provisions for example, had been adopted in respect of foreign immigrants.

32. The application of article 4 of the Convention had already been commented on at length by other members of the Committee. He cited articles 165 and 181 bis of the Spanish Criminal Code (reproduced in paragraph 4 of the report) and asked for details of their actual scope. He would also appreciate clarification of the reform of the Criminal Code currently before parliament which should take into account Spain's commitments under the Convention. Referring to the new administrative act No. 30/1992 of 26 November 1992, he said that it would be interesting to have information on the different languages accepted for the purposes of administrative proceedings and which enjoyed official status along with Castilian. Lastly, referring to the Constitutional Court's decision of 11 November 1991 (report, para. 9) concerning the prohibition of racial discrimination which Mr. Ferrero Costa had usefully read out (the Léon Degrelle case), he asked the delegation of Spain what the scope of that decision was in Spain.

33. Mr. DIACONU said that Spain was particularly interesting as far as the protection of human rights, and in particular the protection of persons of different national and ethnic origins, were concerned. Like Italy, Denmark and Finland, Spain had introduced an autonomy regime which took into account the specific situation in each Autonomous Community. In addition, Spain was one of Europe's gateways to Africa and South America. He had listened attentively to the additional information provided by the Spanish delegation and to the exhaustive report by Mr. Ferrero Costa. However, he deplored the brevity of the report presented by the Spanish delegation. Serious racist acts had occurred in Spain and the Government of Spain should take all necessary measures to avert their repetition and to ensure protection for foreigners on Spanish soil.

34. Regarding article 4 of the Convention, he endorsed the remarks made by Mr. de Gouttes and considered that Spain's current legislative provisions failed to cover all aspects of article 4. Regarding the reciprocity referred to by Mr. Ferrero Costa, he pointed out that the principle was perfectly clear where human rights were concerned: the fact that one country tolerated violations of human rights could in no way justify toleration of the same violations by another country. Lastly, he too would appreciate details of the results achieved by the programmes on behalf of the Gypsy population. That information would be extremely valuable for other countries pursuing similar efforts.

35. Mr. van BOVEN recalled that in September 1968, Spain had been one of the first countries to ratify the Convention. If the current report was compared with Spain's earlier reports, it was impossible not to feel disappointed: when it had ratified the Convention Spain was not yet even a democracy; although it had now become democratic, its first report for eight years was not worthy of the name. Fortunately, Mr. Ferrero Costa had provided a wealth of valuable information and asked numerous highly pertinent questions. He hoped that the questions would shortly receive proper answers, because the Committee was not prepared to wait another seven or eight years. Nevertheless, the Spanish delegation should be thanked for having come to provide additional information that was all too necessary.

36. Regarding paragraph 9 of the report, he requested further information on the case of Léon Degrelle, the former Belgian Nazi leader who had died a few months earlier after having found refuge in Spain. The Spanish dictatorship had granted him citizenship after he had been convicted in his own country for his crimes during the Second World War. Thanks to that protection, he had been able to live comfortably for many years without showing the slightest sign of remorse; quite the contrary, until virtually his dying day he had continued to make racist, pro-Nazi statements. In such circumstances, one might wonder whether Spain really took its obligations under article 4 of the Convention seriously. In the same connection, he asked why Spain had not yet taken any action on Germany's application for the extradition of a German citizen facing prosecution under article 131 of the German Criminal Code for racist, anti-Semitic propaganda.

37. The representative of Spain had stated that the Spanish press was extremely vigilant towards all cases of xenophobia and racism. That was very satisfactory, but it would be interesting to know whether the law-enforcement agencies were equally vigilant; in many countries, in particular in Europe, and even in the Netherlands, the law-enforcement agencies were frequently too lax towards such incidents. He also asked whether the representative of Spain had actually asserted during the discussion that racial discrimination and xenophobia were unknown in Spain or whether there had been a problem of interpretation. Unfortunately, it was all too true that no country in the world could justifiably claim to be free from any such manifestations.

38. Lastly, he endorsed those speakers who had urged Spain to make the declaration provided for by article 14 of the Convention: by doing so, it would demonstrate its attachment to the international human rights procedures and show its desire to strengthen them. It was also highly desirable for Spain to reconsider its position on the reservation it had made in 1968 to article 22 of the Convention regarding the jurisdiction of the International Court of Justice; numerous States parties which had initially expressed reservations regarding the jurisdiction of the Court had since changed their position. Such was the case, for example, of the Russian Federation. By withdrawing its reservation, Spain would help to strengthen international law.

39. Mr. YUTZIS said that as most of the questions he had wished to put had already been asked, he would limit himself to a number of observations. First of all, the Committee found itself in a somewhat paradoxical situation: on the one hand, it had before it a report which had been reduced to its simplest expression and which failed to satisfy the requirements of the Convention; on

the other, it was in the presence of a delegation that had endeavoured to make good the multiple shortcomings of the report. A dialogue had thus begun and should be continued.

40. During the consideration of reports by other European countries, he had already noted an undeniable and disturbing phenomenon: the upsurge of racism and xenophobia in Europe. There were manifold reasons for that phenomenon, but one of them was particularly disturbing and relevant to Spain: the economic crisis. History had unfortunately demonstrated that during periods of recession foreigners and the most vulnerable groups were marginalized and became the victims of discrimination. The information provided by Mr. Ferrero Costa at the current meeting regarding the problems of racism and discrimination in Spain made it possible to appreciate the scale of the problem. In such circumstances, it was essential for Spain, which was concerned about human rights and aware of its important role in the community of European nations and in the world, rapidly to submit a complete report providing all the legislative, administrative and judicial information relevant to the application of the Convention.

41. Mr. WOLFRUM paid tribute to Mr. Ferrero Costa, who had provided the Committee with all the information it could have expected to find in the report: there was no doubt that the Spanish delegation would be grateful to him because the provisions of article 9 had apparently been slightly modified and it was the country rapporteur, rather than the country itself, who had provided the relevant information. In that connection, he endorsed Mr. Yutzis' final suggestion that Spain should rapidly submit a new and detailed report. The report should be submitted sufficiently early to be considered by the Committee in the spring of 1995. In addition, unless the English translation was incorrect, article 165 of the Criminal Code, quoted in paragraph 4 of the report, did not satisfy the requirements of article 4 of the Convention. If the Criminal Code contained no other provisions in that respect - and it was true that it was being amended - Spain was not fulfilling the commitments it had entered into when it had ratified the Convention.

42. In contrast with other international instruments for the protection of human rights, whose aim was to improve the attitude of the authorities and of officials, the International Convention on the Elimination of All Forms of Racial Discrimination was the only instrument whose ambition was to alter the behaviour of citizens themselves: States parties should ensure that no one engaged in discriminatory practices, which was clearly a very difficult task. For precisely that reason, no State could boast of complying in full with the Convention. Mr. Ferrero Costa had referred to the situation of the Gypsies; in the same connection, he would himself refer to other cases. First of all, he asked whether African children enjoyed fair treatment in kindergartens; a Spanish newspaper had reported an alleged case of discrimination in Barcelona which was under investigation - a fact which in itself was praiseworthy. Newspapers were also said to have reported discriminatory practices against Dominican citizens in Madrid. Finally, according to television reports which were not necessarily reliable, clandestine African immigrants had allegedly been ill-treated by the police in the south of Spain for no reason, with some of them even being sent back to sea on unseaworthy vessels. He asked whether the Spanish authorities treated clandestine immigrants in conformity with the rules of law.

43. The CHAIRMAN, speaking in a personal capacity, said that he unreservedly shared the concerns of the previous speakers and endorsed their observations and criticisms. Five years previously, when his country, Bulgaria, had set out on the path to democracy, its parliament had engaged in a lengthy debate about the type of democracy it was desirable to imitate, and at the time the Spanish model had seemed the most attractive. He was convinced that Spain was also a role model in the sphere of human rights, and in particular with regard to the implementation of the Convention. For that reason he regretted that he had been denied the benefit of a more complete and substantive report; no doubt the next report would make good those shortcomings.

44. He was particularly interested in Spain's official languages, one of which was used throughout Spain while the others were used in one or other of the Autonomous Communities. He asked for information additional to that provided in paragraphs 6 and 7 of the report and in particular what practice was followed in the armed forces. Castilian Spanish was certainly used universally in the armed forces, but he would like to know what the situation was in Catalonia and in the Basque Country. The question was of the greatest interest to him as in his own country a debate had begun within parliament regarding the appropriate language for use in the armed forces: the question being considered was whether or not it was desirable to compel members of the armed forces whose mother tongue was Turkish to speak Bulgarian. The wording of paragraph 11, which Mr. Ferrero Costa had referred to at length, was perplexing; apparently the Ministry of Justice alone had been invited to submit information for the preparation of the report and, contrary to proper practice, the other competent ministries and government departments had not been approached in connection with it.

45. Finally, he said that at its current and previous meetings, the Committee had heard two States parties assert that there were no problems of racial discrimination in their countries. The Committee had already had occasion to express its disagreement with such statements where other States parties were concerned. Unfortunately, no country could claim to be immune from all traces or manifestations of racial discrimination. It might have been possible to hope that in Europe particular vigilance would be shown in that respect. In certain highly emotional situations, prejudice could be aroused and it was easy to provoke reactions of racial discrimination among people. It was sufficient to recall, for example, the recent World Cup, which had given rise to unquestionably racist comments about Bulgarian players in an Italian publication. The instinctive reactions caused by football perhaps called for a degree of indulgence, but certain statements tainted by racist connotations should under no circumstances be tolerated.

The meeting rose at 6 p.m.